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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/690,164

10/21/2003

Terry G. Jones

HORS:007

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7590

08/02/2006

H. DALE LANGLEY, JR.

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,164

Applicant(s)

JONES ET AL.

Examiner

Drew E. Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 9-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 3-6, and 9-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose "radiative heat", a tine rib "between forks of the forked implement", an "attacher", or the strip being movable "laterally, vertically, and rotationally".

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 11 recites "between forks of the forked implement". It is no clear how this is possible since the tines are "between the forks".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14-17 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Dzbinski [Pat. No. 6,526,875].

Dzbinski teaches a method for cooking food by providing a shell comprising a continuously curvilinear pan and lid (Figure 1, #10; Figure 14), placing food in the shell and cooking it near a radiative heat source (Figure 6, #48), convection currents within the shell (Figure 6, #52a-b), inherently reusing the shell, and food products (Figure 5, #38).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-4, 6, 9-10, are 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dzbinski.

Dzbinski teaches the above mentioned concepts. Dzbinski also teaches the use of aluminum for the pan and lid (column 4, lines 57-65), an implement fixture on the lid in

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the form of a knob and tine (Figure 4, #26 & 28), and handles on the pan (Figure 2, #20). Dzbinski does not recite serving food in the shell, or pan (claims 18-19), or a thickness of 1.4-2.0 mm (claims 1, 6). It would have been obvious to one of ordinary skill in the art to serve food in the pan of Dzbinski since foods were often left in the cooking container so that people could take as much food as they wanted, this was commonly called "family dining". It would have been obvious to one of ordinary skill in the art to use a thickness of 1.4-2.0 mm in the invention of Dzbinski since Dzbinski simply did not recite a value for the thickness, since aluminum pans were commonly made with a thickness of 1.5-3.2 mm as evidenced by Leck [Pat. No. 6,248,435] (column 11, line 35), and since a minimal thickness would have provided faster heat transfer to the food within the pan of Dzbinski. Regarding changes in size, MPEP 2144.04 states: In re Rose , 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); In re Rinehart, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.). In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device

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having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dzbinski in view of Andersen [Pat. No. 4,329,919].

Dzbinski teaches the above mentioned components. Dzbinski does not recite at least one detent and notch. Andersen teaches a cooking device comprising notches and detents (Figure 1, #50 & 88). It would have been obvious to one of ordinary skill in the art to incorporate the notches and detents of Andersen into the invention of Dzbinski since both are directed to cooking devices, since Dzbinski already included a pan and lid (Figure 1), and since the detents and notches of Andersen functioned to secure the lid to the pan (Figure 1) and thereby prevent spills.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fournier et al [Pat. No. 4,491,235], Mason Jr [Pat. No. 4,892,213], McLean [Pat. No. 5,778,768], and Rodek et al [Pat. No. 6,360,653] teach cooking devices.

Response to Arguments

12. Applicant's arguments with respect to claims 1, 3-6, and 9-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Leck does not teach a thickness of 1.4-2.0 mm. However, Leck clearly taught that aluminum pans were commonly made with a thickness of 1.5-

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3.2 mm (column 11, line 35). These conventional aluminum pans do not include the coatings of Leck.

Conclusion


13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
7-31-06